

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Humber River Hospital

-and-

Ontario Nurses' Association

Grievances re: Vacation Carryover

Lorne Slotnick, Arbitrator

Representing the Employer – Thomas Agnew

Representing the Union – Karen Segal and Keerthana Sivapatham

Hearing – Toronto, Ont., January 29, 2020.

A W A R D

This case concerns a union grievance and 12 individual grievances relating to carryover of vacation from one year to another.

The collective agreement between Humber River Hospital and Ontario Nurses' Association consists of the central agreement with participating hospitals and a local appendix. The local appendix (Article H.1) states that the vacation year, for scheduling and entitlement, runs from June 1 to May 31.

Article H-4, the clause relevant to this case, reads as follows:

An employee will be permitted to carry over ten (10) unused vacation days from one year to the next. Carryover of more days will be considered on request, on an individual basis.

It appears that this clause may have been applied loosely in the past. However, in 2016 and again in 2018, during bargaining, the hospital notified the union that it intended to revert to the strict terms of Article H-4, so that employees could not carry over more than 10 days of vacation from one year to the next unless they made a request and it was approved. All, or nearly all, the current individual grievors were sent a letter in May 2018 alerting them to the change and warning them (in boldface type) that unused vacation in excess of 10 days “will be deemed forfeited unless a request is made and approval granted.”

After the 2018 notice, the union filed a policy grievance and an individual grievance from the president of the bargaining unit, alleging a violation of the collective agreement by deeming any carryover in excess of 10 days as forfeited.

I was appointed to hear the two 2018 grievances, with a hearing date of March 19, 2019. On that date, minutes of settlement were signed resolving both grievances. The settlement confirmed that employees could carry over 10 unused vacation days without management approval, and that any excess vacation time in members' banks as of the date of the May 2018 letter was not being forfeited.

The 13 grievances now before me were all filed at various points starting in June 2019, after the settlement referred to above.

Having reviewed the relevant documents and heard the submissions of the parties, I have concluded that the policy grievance now before me raises the same issues as the grievances resolved in March 2019, and that therefore, considering well established case law on this point, the union is barred from proceeding. (See, for example, *Re Child and Youth Wellness Centre of Leeds and Grenville and OPSEU Local 441* 2000 CarswellOnt 9398 (Briggs).)

I further conclude that the hospital is entitled to enforce the May 2018 letter. However, employees are entitled to make timely requests to carry over vacation from one year to the rest, which are to be considered on an individual basis. Individuals may still file grievances if they disagree with the employer's response to their individual requests.

Considering individual circumstances, three of the grievances are upheld. I order the following vacation hours reinstated within two weeks of the date of this award to the current vacation banks of the following employees:

Yin Hua (Angela) Li – 63.48 hours

Usran Kahiye – 99.56 hours

Idil Hassan – 75.02 hours

The remaining grievances (WS 19-59, 19-63, 19-75, 19-78, 19-64, 19-131, 19-65, 19-73, 19-79, 19-80) are dismissed.

I will remain seized in the event of any issues with implementation of this award.

A handwritten signature in black ink, appearing to read "Lorne Slotnick", written over a horizontal line.

Lorne Slotnick, Arbitrator
February 18, 2020.